### **Additional Information**

### **DEPARTMENT OF ENERGY (DOE)**

For more information about AFVs, contact DOE's National Alternative Fuels Hotline, **1-800-423-1D0E**, and ask for its free brochure.

# NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309

Figure 8

## PART 310—TELEMARKETING SALES RULE

#### Sec.

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- 310.2 Definitions.
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AUTHORITY: 15 U.S.C. 6101-6108.

Source:  $60 \ \mathrm{FR} \ 43864$ , Aug. 23, 1995, unless otherwise noted.

## § 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and

Abuse Prevention Act, 15 U.S.C. 6101-6108.

#### §310.2 Definitions.

- (a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.
- (b) Attorney General means the chief legal officer of a State.
- (c) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.
- (d) *Commission* means the Federal Trade Commission.

- (e) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (f) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.
- (g) Credit card sales draft means any record or evidence of a credit card transaction.
- (h) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.
- (i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.
- (j) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.
- (k) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.
- (I) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.
- (m) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.
- (n) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services.
- (o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- (p) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the

offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

- (q) Prize promotion means:
- (i) A sweepstakes or other game of chance; or
- (2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.
- (r) Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
- (s) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.
- (t) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.
- (u) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations: and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term further solicitation does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

#### §310.3

## § 310.3 Deceptive telemarketing acts or practices.

- (a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:
- (1) Before a customer pays <sup>1</sup> for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:
- (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; <sup>2</sup>
- (ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;
- (iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;
- (iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

- (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer:
- (ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;
- (iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
- (iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- (v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;
- (vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or
- (vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;
- (3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:
- (i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or
- (ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

<sup>2</sup>For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.3(a)(1)(i) of this Rule.

¹When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by \$310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

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- (A) The date of the draft(s);
- (B) The amount of the draft(s);
- (C) The payor's name;
- (D) The number of draft payments (if more than one);
- (E) A telephone number for customer inquiry that is answered during normal business hours; and
- (F) The date of the customer's oral authorization; or
- (iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:
- (A) All of the information contained in §§ 310.3(a)(3)(ii)(A)–(F); and
- (B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and
- (4) Making a false or misleading statement to induce any person to pay for goods or services.
- (b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3 (a) or (c), or §310.4 of this Rule.
- (c) Credit card laundering. Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:
- (1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant:
- (2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the card-holder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

## § 310.4 Abusive telemarketing acts or practices.

- (a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:
- (1) Threats, intimidation, or the use of profane or obscene language;
- (2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:
- (i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and
- (ii) The seller has provided the person with documentation in the form of a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;
- (3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or
- (4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in

obtaining or arranging a loan or other extension of credit for a person.

- (b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:
- (i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or
- (ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.
- (2) A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) if:
- (i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii);
- (ii) It has trained its personnel in the procedures established pursuant to \$310.4(b)(2)(i);
- (iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with §310.4(b)(1)(ii); and
- (iv) Any subsequent call is the result of error.
- (c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.
- (d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:
  - The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (4) That no purchase or payment is necessary to be able to win a prize or

participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

### §310.5 Recordkeeping requirements.

- (a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:
- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services; <sup>3</sup>
- (4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and
- (5) All verifiable authorizations required to be provided or received under this Rule.
- (b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.
- (c) The seller and the telemarketer calling on behalf of the seller may, by

<sup>&</sup>lt;sup>3</sup>For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

written agreement, allocate responsibility between themselves for the recordkeeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with  $\S\S 310.5(a)(1)-(3)$  and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this sec-

#### §310.6 Exemptions.

tion.

The following acts or practices are exempt from this Rule:

- (a) The sale of pay-per-call services subject to the Commission's "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308;

  (b) The sale of franchises subject to
- (b) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR part 436;
- (c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;
- (d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;
- (e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in §§ 310.4(a) (2) or

- (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;
- (f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in §§ 310.4(a) (2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and
- (g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that §310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

### §310.7 Actions by States and private persons.

- (a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.
- (b) Nothing contained in this section shall prohibit any attorney general or

#### §310.8

other authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

#### §310.8 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

### PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RE-CYCLED OIL

Sec

311.1 Definitions.

311.2 Stayed or invalid parts.

311.3 Preemption.

311.4 Testing.

311.5 Labeling.

311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

#### §311.1 Definitions.

As used in this part:

- (a) Manufacturer means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.
- (b) New oil means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil
- (c) *Processed used* oil means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.
- (d) Recycled oil means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.
- (e) Used oil means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

#### §311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

#### §311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of §311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by §311.5 of this part.

#### §311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institute of Standards and Technology ("NIST") on July 27, 1995, entitled "Engine Oil Licensing and Certification System,' American Petroleum Institute ("API") Publication 1509, Thirteenth Edition, January, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of API Publication 1509, "Engine Oil Licensing and Certification System," may be obtained from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the Office of the Federal Register,, 800 North Capitol Street NW., suite 700, Washington,

### §311.5 Labeling.

A manufacturer or other seller may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil only if the manufacturer